



2011 Court Rules
Court Services Division
Administrative Office of the Courts

This document summarizes court rules and rule amendments adopted by the Arizona Supreme Court during its rules agendas in July, September and December 2011.

For rules and amendments adopted by the Court in September 2011, the rule petition number (e.g., R-10-0000) is hyperlinked to the Court's order promulgating the rule change. Please click on the rule petition number to view the order. The text of the rule change appears with the order, except for certain rules previously adopted on an emergency basis that are now permanently adopted. This document provides only a summary; therefore, readers may wish to review the full text of specific rule changes. This summary also provides potential impacts of a rule change on the courts.

This summary notes the effective dates of rules adopted this year on an emergency basis. Except for rules now or previously adopted on an emergency basis, the effective date of rule changes in this 2011 summary is January 1, 2012, unless otherwise noted.

Rule changes regarding the practice or admission to the practice of law have not been included in this summary. Please click on [the Court's Rules link](#) for further information concerning new and amended rules on these topics.

The Court Services Division of the Administrative Office of the Courts prepared this summary. Each adopted rule in this summary has an e-mail link to an individual at the A.O.C. who you may contact for further information. If you have any other questions concerning this document, please contact Mark Meltzer, at (602) 452-3242, or by e-mail at MMeltzer@courts.az.gov.

Rules of Civil Procedure

RULE	AFFECTS	SUMMARY AND IMPACT
Rule 68(h) Rule 74(g) R-10-0030 AOC Contact: Mark Meltzer	<i>Superior Court</i> Judges Clerks Administrators	<p>Summary: This petition sought to clarify that offers of judgment under Rule 68 can be made in arbitration proceedings under Rules 72-77, and the procedures for doing so. The existing rules were ambiguous in this regard. One source of ambiguity was a reference in existing Rule 68 only to “trials,” without mentioning arbitration hearings. The existing rule also had an anomalous time sequence for arbitrations.</p> <p>As a result of these rule changes:</p> <ol style="list-style-type: none"> 1. Rule 74(g) expressly authorizes the use of Rule 68 offers of judgment in arbitration proceedings. 2. Under Rule 68(a), in cases subject to arbitration, no offer of judgment may be made during the period beginning 25 days before the arbitration hearing and ending upon the date of the filing of any notice of appeal of an award pursuant to Rule 77(a). Although an offer is generally effective for 30 days after it is served, Rule 68(h) now provides that in a case subject to arbitration, an offer that has not previously expired shall expire at 5:00 p.m. on the fifth day before the arbitration hearing. 3. Under Rule 68(g), the determination whether a sanction should be imposed after an arbitration hearing shall be made by reference to the judgment ultimately entered, whether on the award itself pursuant to Rule 76(c) or after an appeal of the award pursuant to Rule 77. <p>Impact: Judicial officers have the authority to award Rule 68 sanctions in cases that have gone through arbitration.</p>
Rule 55(a)(1) R-10-0034 AOC Contact: Mark Meltzer	<i>Superior Court</i> <i>Justice Court</i> Judges Clerks	<p>Summary: The current wording of Rule 55(a)(1) may have conveyed a mistaken impression that only certain parties must be served with applications for entry of default, and therefore practitioners may not have served all parties to an action with a copy of those applications.</p> <p>This has now been clarified with an additional provision in Rule 55(a)(1) that states: “Nothing in this Rule relieves a party requesting entry of default from the requirements of Rule 5(a) as to service on other parties.”</p>

RULE	AFFECTS	SUMMARY AND IMPACT
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Impact: Applications for entry of default should include a certificate showing service not only on the party for whom default is sought, but also showing service on the other parties to the case.

Rule 8(h)(3)	<i>Superior Court</i>	Summary: Rules 8(h)(3), 8(i), 16.3, and 39.1 were adopted by Supreme Court Administrative Order number 2002-107. These rules were intended to provide procedures for cases that were admitted into a complex civil litigation pilot program established by that administrative order. R-10-0036 has now adopted these rules on a permanent basis. Although the substance of the rules remains the same, a variety of formatting changes were made. The most significant of these changes was removing the form for certifying complexity from the body of Rule 8(i), and relocating it as a new Form 10 in Rule 84.
Rule 8(i)	Judges	
Rule 16.3	Clerks	
Rule 39.1	Administrators	
Rule 84, Form 10		

[R-10-0036](#)

AOC

Contact:

[Mark](#)

[Meltzer](#)

Impact:

Clerks: Pursuant to Rule 8(h), in those counties in which a complex civil litigation program has been established, in addition to the civil cover sheet required by that rule, the caption shall also identify the action as complex, if the action meets the criteria listed in Rule 8(i). In those courts with an established complex civil litigation program, clerks should continue to anticipate the filing of a “certification of complexity/joint certification of complexity/contravening certification.”

Judges: Judges with complex civil cases may continue to utilize the procedures for identifying and designating complex cases under Rule 8(i), for managing complex cases under Rule 16.3, and for the trial of complex cases under Rule 39.1.

Rule 77	<i>Superior Court</i>	Summary: Rule 77(d), provided that when a notice of appeal from an arbitration award was filed, “all rights to change of judge are renewed and no event prior thereto shall constitute a waiver.” Under Rule 74(c), certain motions that are filed after a case is assigned to an arbitrator, such as a motion to dismiss, a motion for summary judgment, or a motion to continue on the inactive calendar, are heard by the assigned judge rather than by the arbitrator. A party could therefore have one of these contested motions heard before the trial judge, and then on appeal from the arbitration, still have an intact right to a change of that judge under Rule 77(d). This circumstance is contrary to
R-11-0008	Judges	
	Clerks	
AOC	Administrators	
Contact:		

[Mark](#)

[Meltzer](#)

RULE	AFFECTS	SUMMARY AND IMPACT
		<p>Rule 42(D)(ii), which provides that a judge’s ruling on a contested issue operates as a waiver of the right to a change of judge.</p> <p>Rule 77(d) has therefore been stricken.</p> <p>Impact: Clerks and judges should be alert in arbitration appeals for a Rule 42 notice of change of judge, when the judge has previously heard under Rule 74(c) a contested issue in the course of that arbitration proceeding. In these circumstances, there is no longer a right to a change of judge.</p>
<p>Rule 13(f) Rule 15(a)(1) R-11-0010 AOC Contact: Mark Meltzer</p>	<p><i>Superior Court</i> <i>Justice Court</i> Judges Clerks Administrators</p>	<p>Summary: Rule 13(f), entitled “omitted counterclaim,” has been abrogated. “Omitted counterclaims” will now be governed by Rule 15 as are other amended pleadings. This practice will be consistent with the practice under the 2009 revisions to the federal rules.</p> <p>With the current revisions to Arizona Rule 15(a)(1) adopted by this rule petition, amendments to pleadings may be filed as a matter of course:</p> <ul style="list-style-type: none"> • If the pleading is one to which no responsive pleading is permitted: no later than 21 days after serving the pleading; • If the pleading is one to which a responsive pleading is permitted: no later than 21 days after service of the responsive pleading; or if a motion under Rule 12(b), (e), or (f) is filed, on or before the date that a response to the motion is due, whichever is earlier. <p>Amendment as a matter of course after service of a motion under Rule 12(b), (e), or (f) does not, by itself, moot the motion as to the adequacy of the allegations of the pleading as revised in the amended pleading, and does not relieve a party opposing the motion from filing a timely response to the motion.</p> <p>Impact: No impact is anticipated. However, and as noted above, the court should be aware that when a motion is filed under Rule 12(b) [a motion to dismiss], (e) [a motion for a more definite statement], or (f) [a motion to strike], the filing of a revised pleading intended to cure the defects raised by the motion does not relieve the party opposing the motion of the duty to file a timely response to the motion.</p>

Rules of Civil Appellate Procedure

RULE	AFFECTS	SUMMARY AND IMPACT
Rule 5(c) R-11-0002 AOC Contact: Mark Meltzer	<i>Court of Appeals</i> <i>Superior court</i> Judges Clerks Administrators	<p>Summary: The amendment conforms the ARCAP rules to Rule 6(e) of the Arizona Rules of Civil Procedure, which is the calculation of time for a party to respond to a notice or other paper served by a method other than personal delivery. The amendments to Ariz. R. Civ. P. 6(e) became effective on January 1, 2011.</p> <p>The ARCAP amendment was effectuated by deleting Rule 5(c), entitled “additional time after service by mail.” Rule 6(e) of the Ariz. R. Civ. P., entitled “additional time after service under Rule 5(c)(2)(C) or (D)” is already referenced in ARCAP Rule 5(a).</p> <p>The comment to Ariz. R. Civ. P. Rule 6(e) clarifies the calculation of time to respond after service by mail, including service by electronic means.</p> <p>Impact: Courts need to be aware of this conforming change for calculating time.</p>
Rule 21(c)(1) R-10-0033 AOC Contact: Mark Meltzer	<i>Court of Appeals</i> Judges Clerks Administrators	<p>Summary: The amendment was intended to make this rule clear on its face that applicants for attorneys’ fees must specifically cite -- at the time of a fee request on appeal -- the statute, rule, decisional law, contractual basis, or other authority authorizing an award of fees. A citation merely to Rule 21 is not a sufficient citation of authority. Rather, the citation of authority must demonstrate the substantive basis for the fee request.</p> <p>Impact: Information only.</p>
Criminal Rules 31.13, 31.18, 31.19 ARCAP Rules 13, 22, 23	<i>Court of Appeals</i> <i>Superior court</i> Judges Clerks Administrators	<p>Summary: Substantially parallel amendments are provided in these corresponding criminal and civil appellate rules.</p> <ol style="list-style-type: none"> 1. Ariz. R. Crim. P. Rule 31.13 and ARCAP Rule 13(d): <ul style="list-style-type: none"> • Ariz. R. Crim. P., Rule 31.13(a). Appellate briefs and appendices may now be filed electronically, as well as in person or by mail. • Ariz. R. Crim. P. Rule 31.13(c) and ARCAP Rule 13(d)(2). If an appendix is included with an

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<p>R-11-0011</p> <p>AOC</p> <p>Contact:</p> <p>Mark</p> <p>Meltzer</p>		<p>electronically filed appellate brief, and if the appendix contains multiple documents, it must also include a table of contents with electronic bookmarks to the documents contained in the appendix and listed in the table of contents.</p> <p>Ariz. R. Crim. P. Rule 31.18 and ARCAP Rule 22:</p> <ul style="list-style-type: none"> • Subsection (b) of these respective rules requires a request for extension of time to file a motion for reconsideration be filed in the appellate court that issued the decision or opinion in question. • A new subsection (c) has been created regarding the response to a motion for reconsideration. • Subsection (d) requires that the form, length and contents of a motion for reconsideration conform to the provisions of Criminal Rule 31.12 or Civil Appellate Rule 6(c) “not otherwise suspended by any Administrative Order of the Supreme Court.” <p>Ariz. R. Crim. P. Rule 31.19 and ARCAP Rule 23:</p> <ul style="list-style-type: none"> • Subsection (a) requires petitions for review and cross-petitions for review from a decision of the Court of Appeals be filed in the Supreme Court instead of in the Court of Appeals. Motions to extend the time to file are now in subsection (a) of these rules, and these motions must be filed in the Supreme Court; current Rules 31.19(j) and 23(j) are deleted. • Subsection (b) regarding mailing is changed to permit electronic transmittal of documents. Additionally, in the event a petition or cross-petition becomes moot by the grant of a motion for reconsideration, the petitioner or cross-petitioner is required to notify the parties and the clerk of the Supreme Court. • Subsection (c) limits the requirement of filing copies of petitions or cross-petitions for review to petitions filed in hard copy; it also sets forth binding requirements for hard copies. An appendix to an electronically filed petition or cross-petition must include a table of contents with bookmarks to the documents contained in the appendix and listed in the table of contents. • Subsections (d) and (g): Language in these provisions is changed from “transmittal” of the record upon filing a petition for review to making

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the record “available.” These changes acknowledge that no actual record will be physically transmitted; the record will be available electronically. The amendments in subsection (d) also specify when the record is made available to the clerk of the Supreme Court in situations where a motion for reconsideration is pending in the Court of Appeals.

- Subsection (e) requires the response to a petition for review and any appendix to the response to comply with the requirements of subsection (c) “not otherwise suspended by any Administrative Order of the Supreme Court.”
- Subsection (h). The amendment to criminal Rule 31.19(h) provides that if the Supreme Court denies review, the order shall specify any justices who voted to grant review. (This provision already appears in ARCAP Rule 23(h).)

Impact: No impact on the trial courts. Note in the Order concerning these changes that a proposed amendment in this rule petition to Rule 11(a) of the Rules of Civil Procedure concerning signatures on documents submitted electronically was not adopted, consistent with the amendment in R-11-0012 striking the text of Supreme Court Rule 124.

Rule 7 R-11-0019 AOC Contact: Mark Meltzer	<i>Superior Court</i> Judges Clerks Administrators	<p>Summary: Amendments have been made to Rule 7(a) concerning supersedeas bonds that conform this rule to recently enacted A.R.S. § 12-2108.</p> <p>These amendments primarily concern the amount of a supersedeas bond. The amendments require that the court set the bond in <u>the lesser</u> of the following amounts:</p> <ul style="list-style-type: none"> (A) The total amount of damages awarded, excluding punitive damages; (B) Fifty per cent of the appellant's net worth; (C) Twenty-five million dollars. <p>Notwithstanding the foregoing, the court may require an appellant to post a bond in an amount up to the full amount of the judgment if an appellee proves by clear and convincing evidence that the appellant is intentionally dissipating assets outside the ordinary course of business to avoid payment of a</p>
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RULE	AFFECTS	SUMMARY AND IMPACT
		<p>judgment.</p> <p>The trial court may also lower the bond amount to an amount that will not cause an appellant substantial economic harm if the appellant proves by clear and convincing evidence that the appellant is likely to suffer substantial economic harm if required to post a bond in the amount set pursuant to the provisions of (A), (B), or (C) above.</p> <p>The court may also consider whether there is security for the judgment, or if there is property in controversy held by the court or by the sheriff.</p> <p>Impact: Under the provisions of Rule 7(a), the amount of the bond may be determined upon stipulation or upon motion. If determined upon motion, the rule amendments must be applied by the court to set the bond amount.</p>

Rules of Criminal Procedure

RULE	AFFECTS	SUMMARY AND IMPACT
<p>Rule 17.1(a) Rule 41, Form 28(a) R-10-0037 AOC Contact: Mark Meltzer</p>	<p><i>Justice Court</i> <i>Municipal Court</i> Judges Clerks Administrators</p>	<p>Summary: This amendment to Rule 17.1(a) permits the entry of pleas of guilty and no contest to a misdemeanor or a petty offense in limited jurisdiction courts by mail, and without a personal appearance. The court may allow a defendant to utilize this procedure if a personal appearance by the defendant would constitute an undue hardship, such as illness, physical incapacity, substantial distance to travel, or incarceration.</p> <p>The entry of a guilty plea by mail is not permitted in specified categories of cases and circumstances. These categories are: (1) cases involving a victim; (2) cases in which the court may impose a jail term, unless the defendant is sentenced to time served, or the defendant is currently incarcerated and the proposed term of incarceration would not extend the period of incarceration and would be served concurrently; (3) cases in which the court may sentence the defendant to a term of probation; (4) offenses for which A.R.S. § 13-607 requires the taking of a fingerprint upon sentencing; and (5) when this</p>

RULE	AFFECTS	SUMMARY AND IMPACT
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method of entering a plea would not be in the interests of justice.

The entry of a plea by mail must comply with the requirements of Rule 17, such as a waiver of rights and the establishment of a factual basis. Accordingly, a plea by mail form has been adopted as Rule 41, Form 28(a), and this must be used for entry of a plea by mail.

Impact: Rule 17.1(a)(4) requires that a local court establish a policy for participation by the prosecutor in pleas by mail.

Judges, clerks, and court administrators must assure that the plea by mail procedure is not utilized for cases or in circumstances where the defendant is not permitted to enter a plea by mail.

Each court must determine how it will make Form 28(a) available to a defendant, for example, whether it wishes to post the form on a court website, or whether it will provide the form in response to a telephonic or written request from the defendant.

When correctly formatted, Form 28(a) should consist of four pages. Page one of Form 28(a) contains instructions for the defendant, and this page need not be filed. The defendant completes pages two (which contains the case caption) and three of the form, and the top of page four. A notary signs page four. Additional information is added to page four by the judge and by a court clerk.

The defendant is advised to follow the instructions completely and carefully. The defendant must refer to his or her copy of the complaint when completing the form. Self-represented litigants will typically use the plea by mail procedure at an early stage of the proceedings, and before interacting with the prosecutor. Accordingly, the form informs the defendant that if there is more than one offense alleged in the complaint, a defendant who submits the form is pleading guilty or no contest to each of the criminal offenses in the complaint.

The form includes spaces:

- On the second page, for the defendant to indicate the hardship that allows a plea by mail.
- For the defendant to indicate information he or she

RULE	AFFECTS	SUMMARY AND IMPACT
		<p>would like the judge to consider in determining an appropriate sentence.</p> <ul style="list-style-type: none"> • For the judge to accept the plea by mail by adding the judge's signature, the date, and the offense(s) for which the defendant is found guilty. • For the judge to write the defendant's sentence. • For a certification for the clerk. Once the judge's section is complete, the clerk certifies that a copy of the document will be mailed to the defendant at the address that the defendant has provided. <p>The defendant's signature on the plea by mail form must be notarized. It is expected that payment of a fine will be processed as if the plea was taken and sentence was imposed in open court or by telephone.</p>

Criminal Rules 31.13, 31.18, 31.19 ARCAP Rules 13, 22, 23

Court of Appeals Superior court

Judges
Clerks
Administrators

[R-11-0011](#)

AOC
Contact:
[Mark Meltzer](#)

Summary: Substantially parallel amendments are provided in these corresponding criminal and civil appellate rules.

1. Ariz. R. Crim. P. Rule 31.13 and ARCAP Rule 13(d):
 - Ariz. R. Crim. P., Rule 31.13(a). Appellate briefs and appendices may now be filed electronically, as well as in person or by mail.
 - Ariz. R. Crim. P. Rule 31.13(c) and ARCAP Rule 13(d)(2). If an appendix is included with an electronically filed appellate brief, and if the appendix contains multiple documents, it must also include a table of contents with electronic bookmarks to the documents contained in the appendix and listed in the table of contents.
- Ariz. R. Crim. P. Rule 31.18 and ARCAP Rule 22:
- Subsection (b) of these respective rules requires a request for extension of time to file a motion for reconsideration be filed in the appellate court that issued the decision or opinion in question.
 - A new subsection (c) has been created regarding the response to a motion for reconsideration.
 - Subsection (d) requires that the form, length and contents of a motion for reconsideration conform to the provisions of Criminal Rule 31.12 or Civil Appellate Rule 6(c) "not otherwise suspended by any Administrative Order of the Supreme Court."
- Ariz. R. Crim. P. Rule 31.19 and ARCAP Rule 23:
- Subsection (a) requires petitions for review and

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		<p>cross-petitions for review from a decision of the Court of Appeals be filed in the Supreme Court instead of in the Court of Appeals. Motions to extend the time to file are now in subsection (a) of these rules, and these motions must be filed in the Supreme Court; current Rules 31.19(j) and 23(j) are deleted.</p> <ul style="list-style-type: none"> • Subsection (b) regarding mailing is changed to permit electronic transmittal of documents. Additionally, in the event a petition or cross-petition becomes moot by the grant of a motion for reconsideration, the petitioner or cross-petitioner is required to notify the parties and the clerk of the Supreme Court. • Subsection (c) limits the requirement of filing copies of petitions or cross-petitions for review to petitions filed in hard copy; it also sets forth binding requirements for hard copies. An appendix to an electronically filed petition or cross-petition must include a table of contents with bookmarks to the documents contained in the appendix and listed in the table of contents. • Subsections (d) and (g): Language in these provisions is changed from “transmittal” of the record upon filing a petition for review to making the record “available.” These changes acknowledge that no actual record will be physically transmitted; the record will be available electronically. The amendments in subsection (d) also specify when the record is made available to the clerk of the Supreme Court in situations where a motion for reconsideration is pending in the Court of Appeals. • Subsection (e) requires the response to a petition for review and any appendix to the response to comply with the requirements of subsection (c) “not otherwise suspended by any Administrative Order of the Supreme Court.” • Subsection (h). The amendment to criminal Rule 31.19(h) provides that if the Supreme Court denies review, the order shall specify any justices who voted to grant review. (This provision already appears in ARCAP Rule 23(h).)

RULE	AFFECTS	SUMMARY AND IMPACT
		<p>Impact: No impact on the trial courts. Note in the Order concerning these changes that a proposed amendment in this rule petition to Rule 11(a) of the Rules of Civil Procedure concerning signatures on documents submitted electronically was not adopted, consistent with the amendment in R-11-0012 striking the text of Supreme Court Rule 124.</p>

Rules of Evidence

RULE	AFFECTS	SUMMARY AND IMPACT
<p>Arizona Rules of Evidence Rule 17.4(f), Arizona Rules of Criminal Procedure</p> <p>R-10-0035 AOC Contact: Mark Meltzer</p>	<p><i>Court of Appeals Superior Court Justice Court Municipal Court</i></p> <p>Judges</p>	<p>Summary: These rule changes were initiated by the Ad Hoc Committee on the Rules of Evidence, which was established by Administrative Order 2010-42 and was chaired by Vice Chief Justice Hurwitz. The AO directed the committee to compare the Arizona Rules of Evidence with the Federal Rules of Evidence, to identify differences between the two sets of rules, and to provide input regarding conforming changes.</p> <p>A “Prefatory Comment” to the amended Arizona Rules of Evidence notes that there are three different kinds of rule changes:</p> <ol style="list-style-type: none"> 1. “Restyling” changes, where the rules have been made to correspond to the federal rules, and which were not meant to change the admissibility of evidence. “Restyling” is intended to make rules more easily understood, and to make style and terminology consistent throughout the rule and with the restyled federal rules. 2. Amendments to the Arizona rules to “conform” them to the federal rules, which may alter the way evidence is admitted. <p>The Court has adopted conforming changes to Rule 103 (Rulings on Evidence); Rule 201 (Judicial Notice); Rule 301 (Presumptions); Rule 407 (Subsequent Remedial Measures); Rule 410 (Plea Discussions); Rules 412-415; Rule 606 (Juror’s Competency as a Witness); Rule 608 (Character Evidence); Rule 609 (Impeachment by Criminal Conviction); Rule 611 (Mode of Presenting Evidence); Rule 615 (Excluding Witnesses); Rule 701 (Opinion Testimony by Lay Witnesses); Rule 702 (Testimony by Expert Witnesses); Rule 706 (Court</p>

Appointed Experts); Rule 801(d)(2) (Definitions That Apply to This Article; Exclusions from Hearsay); Rule 803(6)(A), (6)(D) and (24) (Hearsay Exceptions Regardless of Unavailability); Rule 804 (b)(1), (b)(3) and (b)(7) (Hearsay Exceptions When Declarant Unavailable); and Rule 807 (Residual Exception).

3. Some instances where the Arizona rules either retain language that is distinct from the federal rules (e.g., Rule 404) or that deliberately depart from the language of the federal rules (e.g., Rule 412).

Impact:

Conforming changes that are not merely restyling, as well as deliberate departures from the language of the federal rules, are noted at the outset of comments to particular Arizona rules.

Rule 702, Testimony by Expert Witnesses, is among the conforming changes. While the corresponding Federal Rule 702 has been adopted, the comment to the Arizona rule notes that “the trial court’s gatekeeping function is not intended to replace the adversary system.”

Rule 17.4(f) of the Rules of Criminal Procedure has also been amended by this Order. Under the former rule, neither the plea discussion nor statements made at a hearing on the plea are admissible. Under the amended rule, Rule 410 of the Rules of Evidence governs the admissibility of these items. Rule 410 provides in part that these items may be admissible in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

Rules of Family Law Procedure



RULE	AFFECTS	SUMMARY AND IMPACT
Rule 4 R-11-0006 AOC Contact: Kathy Sekardi	<i>Superior Court</i> Judges Clerks Administrators	Summary: This amendment conforms the ARFLP rules to Rule 6(e) of the Arizona Rules of Civil Procedure, which is the calculation of time for a party to respond to a notice or other paper served by a method other than personal delivery. The amendments to Ariz. R. Civ. P. Rule 6(e) became effective on January 1, 2011. The amendments to ARFLP Rule 4 include adoption of the comments to the corresponding civil procedure rule, Rule 6(e).

Impact: Courts need to be aware of this conforming change for calculating time.

Rules of Procedure for the Juvenile Court

RULE	AFFECTS	SUMMARY AND IMPACT
Rule 40.1 R-11-0013 AOC Contact: Caroline Lautt-Owens	<i>Superior Court</i> Judges Clerks Administrators	<p>Summary: This new rule establishes duties and responsibilities for attorneys and guardians ad litem relating to representation of children. The petition for adoption of this rule was filed to promote higher quality representation for children in care, and to bar the appointment of untrained or poorly trained court-appointed representatives for children.</p> <p>Attorneys and guardians ad litem appointed to represent children in dependency, guardianship, and termination cases in the State of Arizona are required to adhere to this rule. Privately retained attorneys are required to become equally familiar with the rule. In addition to adhering to this rule, Arizona attorneys and guardians ad litem should be familiar with and consult national standards and references that are specified in a comment to the rule to ensure the highest standard of practice in this area of the law.</p> <p>Examples of requirements under this rule:</p> <ul style="list-style-type: none">• Attorneys and guardians ad litem shall inform the child, in an age and developmentally appropriate manner, about the nature of the proceedings, the attorney's role, that the child has the right to attend hearings and speak to the judge, the consequences of the child's participation or lack of participation, the possible outcomes of each hearing, and other legal rights with regards to the proceeding and the outcomes of each substantive hearing.• The attorney and guardian ad litem shall meet in person with the child before the preliminary protective hearing, if possible, or within fourteen (14) days after the preliminary protective hearing. Thereafter, the attorney and guardian ad litem for the child shall meet in person with the child and have meaningful communication before every substantive hearing.• Attorneys and guardians ad litem shall be knowledgeable of the child welfare agencies, governmental programs,

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and community-based service providers and organizations serving children (e.g., behavioral health, developmental disability, health care, education, financial assistance, counseling support, family preservation, reunification, permanency services and juvenile justice).

- Attorneys and guardians ad litem shall complete an introductory six (6) hours of court approved training prior to their first appointment unless otherwise determined by the presiding judge of the juvenile court in which the attorney or guardian is practicing for good cause shown, and an additional two (2) hours within the first year of practice in juvenile court. All attorneys and guardians ad litem shall complete at least eight (8) hours each year of ongoing continuing education and training.

With regard to the education requirement noted above, the rule further requires that:

Attorneys shall provide the judge with an affidavit of completion of the six (6) hour court-approved training requirement prior to or upon their first appointment as attorney or guardian ad litem for a child after the adoption of this rule, unless a waiver of this requirement has been obtained from the presiding judge of the juvenile court in which the appointment is to be made. The affidavit of completion shall include a list of courses including the name of the training, the date of the training, the training provider, and the number of hours for each course.

All attorneys shall file annually an affidavit with the presiding judge certifying their compliance with this section. Such affidavit shall be filed concurrently with the affidavit of compliance with State Bar MCLE and shall include a list of courses including the name of the training, the date of the training, the training provider and the number of hours for each course.

Impact: Each court should establish a process for obtaining and storing the affidavits of completion and compliance; and for assuring that attorneys have filed appropriate affidavits of compliance annually.

The comment to this rule states that Arizona courts have broad discretion in enforcing this rule and in imposing sanctions when appropriate. Sanctions may include the removal of the attorney

RULE	AFFECTS	SUMMARY AND IMPACT
		or guardian ad litem from a particular case or from representation of children for a period of time. The comment also states that attorneys providing representation in Arizona may also be subject to sanctions under the Arizona Rules of Professional Conduct for failure to adhere to the rule.

Rules of Probate Procedure

RULE	AFFECTS	SUMMARY AND IMPACT
Rule 7 R-11-0023 AOC Contact: Nancy Swetnam	<i>Superior Court</i> Judges	<p>Summary: This change amends Rule 7(A)(1)(c) to include, within the definition of "confidential document," budgets that are filed in conservatorship estates.</p> <p>Impact: A confidential document shall not be maintained as part of the public record of a probate case. See Probate Rule 7(C).</p> <p>Effective: 2/1/2012</p>
Rule 8 R-11-0023 AOC Contact: Nancy Swetnam	<i>Superior Court</i> Judges Clerks	<p>Summary: Rule 8(B) is amended to allow for dismissal of a petition that commences a probate case when service has not been completed within 120 days of the filing date. The court, upon motion or <i>sua sponte</i> and with notice to the petitioner, may dismiss the petition without prejudice if service of a notice and petition is not made upon all required persons as prescribed by Title 14 within 120 days after the filing of the initial petition. Time for service may be extended if the petitioner shows good cause for failure to serve within the allowed time.</p> <p>Impact: Courts need to monitor cases for compliance with the 120-day service deadline if the court intends to dismiss petitions <i>sua sponte</i>.</p> <p>Effective: 2/1/2012</p>
Rule 10 R-11-0023 AOC Contact: Nancy Swetnam	<i>Superior Court</i> Judges	<p>10(C)(4) - Duties Regarding Minor's Death, Adoption, Marriage or Emancipation</p> <p>Summary: This new subpart to Rule 10 adds to the duties of court-appointed fiduciaries by setting forth notification requirements. A court-appointed guardian is required to notify the court within ten days of a minor ward's death, adoption,</p>

RULE**AFFECTS****SUMMARY AND IMPACT**

marriage, or reaching the age of majority. If the ward did not have a conservator, the guardian is also required to provide the court and former ward with a list of the ward's known assets.

Impact: In the event of termination of a guardianship under this provision, the court will need to assure that a written list of assets has been filed with the court and provided to the former ward.

Effective: 2/1/2012

10(D)(1) - Duties Relating to Counsel for Fiduciaries

Summary: This new addition to Rule 10 requires a fiduciary's attorney to encourage the fiduciary to take actions, for which the fiduciary has authorization and competence, on his or her own, rather than having the attorney act on the fiduciary's behalf. The intent is to minimize legal expenses.

Impact: The court should consider this provision when reviewing bills for attorneys' fees and when reviewing accounts filed by fiduciaries.

The Court also adopted changes to Rule 31, Rules of the Supreme Court to authorize licensed fiduciaries to perform specified services without the assistance of counsel. Examples include preparation and filing of the annual account by the fiduciary. Amendments to ACJA § 7-202 are being drafted to incorporate these provisions.

Effective: 2/1/2012

10(E)(1)-(2) - Duties of Counsel for Subject Person of Guardianship/Conservatorship Proceedings; Duties of Guardian Ad Litem

Summary: These new subsections establish initial and subsequent training requirements for any attorney who serves as a court-appointed attorney or guardian ad litem for an adult ward or an adult protected person. The attorney complete a training course prescribed by the Supreme Court and then must file a certificate of completion with the court making the appointment. Attorneys who serve long term must complete additional training every five years and file a certificate of completion with the appointing court.

RULE**AFFECTS****SUMMARY AND IMPACT**

Impact: The Supreme Court will prescribe the training course (currently under development) and will issue certificates of completion. Appointing courts must be aware of the training requirements and monitor for compliance.

Effective: 9/1/2012

10(F)(1)-(2) – Duties of Investigators

Summary: These new subsections establish initial and subsequent training requirements for any person who is to be appointed as an investigator pursuant to A.R.S. §§ 14-5303(C), 14-5407(B), or 36-540(G). Training must be completed prior to appointment. The Supreme Court will prescribe the training course, and the investigator must file a copy of the certificate of completion with the appointing court. Persons who continue to serve as court-appointed investigators must complete additional training every five years and file a certificate of completion with the appointing court.

Impact: The Supreme Court will prescribe the training course (currently under development) and will issue certificates of completion. Appointing courts must be aware of the training requirements and monitor for compliance.

Effective: 9/1/2012

10(G)(1)-(3) – Remedies for Vexatious Conduct; Definitions

Summary: This new addition to Rule 10 creates remedies that the court can apply against a person who engages in vexatious conduct in a probate case. The rule defines "court-appointed attorney," "fiduciary," and "vexatious conduct" for purposes of this section. The remedies permitted under this provision are in addition to any other civil remedy or any other provision of law.

Impact: Information only.

Effective: 2/1/2012

Rule 10.1 *Superior Court*

[R-11-0023](#)

AOC Judges

Contact:

[Nancy](#)

[Swetnam](#)

New Rule: Prudent Management of Costs.

Summary: This new rule establishes the fiduciary's duty, in Title 14 proceedings, to prudently manage costs, preserve assets, and protect against incurring costs that exceed the benefit to the ward, protected person, decedent's estate or trust, except as otherwise directed by a governing instrument or court order. The fiduciary must disclose to the court and to all persons entitled to notice if the fiduciary has a reasonable belief the cost of compliance with a court order will exceed the probable benefit to the ward, protected person, or decedent's estate or trust. If appropriate, the court shall enter or modify orders to protect or further the best interest of ward, protected person, decedent's estate or trust against projected costs that exceed benefits. Further, the court may order that the guardian ad litem, fiduciary, or attorney obtain competitive bids for goods and services.

Impact: This new rule further provides that market rates for goods and services are a proper, ongoing consideration for the fiduciary and the court during the initial court appointment of a fiduciary or attorney, a hearing on a budget objection, or a request to substitute a court-appointed fiduciary or attorney.

Effective: 2/1/2012

Rule 15.1 *Superior Court*

[R-11-0023](#)

AOC Judges

Contact:

[Nancy](#)

[Swetnam](#)

New Rule: Appointment of Guardian Ad Litem.

Summary: A party requesting appointment of a guardian ad litem shall make the request by motion. The motion must explain why the appointment of a GAL is necessary or advisable, and what if any special expertise is required of the GAL. The court's appointing order must set forth the scope of the appointment, including reasons for and duration of the appointment, rights of access, and applicable terms of compensation. The court may enter an order authorizing the guardian ad litem, upon appointment, to have immediate access to the person and all medical and financial records, including records and information that are otherwise privileged or confidential. A custodian of any relevant record must, upon receipt of a certified copy of the order, provide access to records authorized by the court.

Impact: Information only.

Effective: 2/1/2012

Rule 15.2 *Superior
Court*
[R-11-0023](#)
AOC
Contact: Judges
 Clerks
[Nancy](#) Administrators
[Swetnam](#)

New rule: Involuntary Termination of Appointment; Other Remedies for Non-Compliance; Dismissal; and Sanctions.

15.2(A) - Dismissal of probate, special administration or subsequent administration proceedings for lack of prosecution

Summary: Two years after case initiation, the court is required to issue notice of impending dismissal unless specific statements, petitions, or orders identified in the rule have been filed. The Clerk of Court or the court administrator, whoever is designated by the presiding judge, must promptly notify parties, heirs and devisees whose addresses are in the court file, and any others demanding notice of the impending dismissal. Ninety days after issuance of the notice, the court shall dismiss the case without prejudice and terminate the appointment of the personal representative or special administrator without a hearing unless any one of specified documents designated in the rule have been filed. Termination of the appointment does not discharge the fiduciary from liability or exonerate any bond. The court may extend the time periods in this rule for good cause.

Impact: The court must monitor aging cases and send notice of impending dismissal at the appropriate time. The Clerk or Court Administrator, whoever is designated by the presiding judge, must notify the appropriate persons of the impending dismissal. The court must continue to monitor the case for 90 days after notice is sent and dismiss it without prejudice if no action has been taken by the fiduciary.

Effective: 2/1/2012

15.2(B) - Termination of minor guardianship case

Summary: The Clerk of the Court or the court administrator, whoever is designated by the presiding judge, is required to close a minor guardianship case filed pursuant to A.R.S. §§ 14-5201 to - 5212, when the minor reaches majority, is adopted, marries, or dies. Unless a petition has been filed pursuant to A.R.S. § 14-5303, the court must set a status hearing not less than 90 days before the minor's 18th birthday if the court has reason to believe the minor has a disability or impairment that necessitates appointment of a guardian after the minor's 18th birthday.

Impact: The Clerk of the Court or the Court Administrator, whoever the presiding judge designates, must monitor the case for

any of these events. The court must evaluate the case to determine whether the minor has a disability or impairment that may necessitate appointment of a guardian for an adult. The status hearing must be set not less than 90 days before the minor's 18th birthday to determine whether a petition for appointment of a guardian for an adult should be filed.

Effective: 2/1/2012

15.2(C) - Remedies for non-compliance by guardian or conservator of an adult

Summary: If a guardian or conservator fails to comply with Title 14 requirements, court rules, or court orders, the court may enter orders to ensure compliance or protect the best interests of the ward or protected person. Possible remedies are delineated in the rule.

Impact: Information only.

Effective: 2/1/2012

15.2(D) -(F) – General involuntary termination; effect of dismissal; dismissal authority

Summary: If no action or hearing occurs within six months of case initiation, the court shall issue a notice that the case will be administratively dismissed in 90 days without hearing unless, prior to that date, the initiating party files a request for action or a status report describing remaining matters for resolution. The court must provide the notice to all parties, persons entitled to notice of the commencement of the case, and any person who filed a demand for notice.

Unless otherwise ordered by the court, the order dismisses all pending matters in the case without prejudice, but it does not dismiss, vacate, or set aside any final order approving accountings or other actions of a person appointed under Title 14.

The court's authority to issue notices, dismiss cases, and terminate appointments may be performed by court administration or by electronic process.

Impact: Courts must monitor case activity and send the notice of administrative dismissal to the appropriate persons at the proper

time. Continued monitoring is necessary to determine whether the case should be terminated after 90 days if there has been no action.

A process should be in place so court administration or an appropriate electronic process can perform the tasks of issuing notices, dismissing cases, and terminating appointments.

Effective: 2/1/2012

Rule 18 *Superior Court*

[R-11-0023](#)

AOC Judges

Contact: Clerks

[Nancy Swetnam](#)

Summary: This rule is amended to add subsection (C), which allows a party to file by the response deadline a "notice of repetitive filing." A motion or petition is repetitive if it requests the same or substantially similar relief to what was requested within the preceding twelve months by the movant or petitioner, and if the subsequent motion or petition does not describe in detail a change in circumstance that supports the requested relief. The court may summarily strike a repetitive motion, without hearing, on its own initiative or following receipt of a notice of repetitive filing.

Impact: The Clerk must be aware that the filing of a notice of repetitive filing stays the time to respond or object to the alleged repetitive filing until further order of the court. Court evaluation is necessary as it may summarily strike a repetitive motion *sua sponte* or following receipt of a notice of repetitive filing.

Effective: 2/1/2012

Rule 19 *Superior Court*

[R-11-0023](#)

AOC Judges

Contact:

[Nancy Swetnam](#)

Summary: This rule is amended to add conditions regarding appointment of an attorney. Absent good cause, a party cannot nominate a specific attorney to represent the ward except if the attorney has an existing or prior attorney-client relationship with the ward. Unless otherwise ordered by the court, an attorney who has an existing attorney-client relationship with the nominated or appointed fiduciary cannot be appointed as attorney for the ward.

Impact: Information only.

Effective: 2/1/2012

Rule 22 *Superior
Court*

[R-11-0023](#)

AOC Judges

Contact: Clerks

[Nancy](#)

[Swetnam](#)

22(C)(1)-(4) - Restricted accounts

Summary: Every order appointing a conservator, guardian, or personal representative must include the following language: "Warning: This appointment is not effective until the letters of appointment have been issued by the Clerk of the Superior Court." Every order appointing a conservator or a personal representative or that is entered pursuant to A.R.S. § 14-5409 must plainly state any restrictions on the fiduciary's authority to manage the estate's assets. If the restriction affects the fiduciary's ability to manage monetary assets, the order and any letters that issue must contain specific warning language that requires deposit of funds in interest-bearing, federally insured accounts of institutions doing business in Arizona and that requires a certified order of the superior court to withdraw principal or interest. A fiduciary is required to file a proof of restricted account for every restricted account within 30 days after the order or letters are first issued. An attorney who represents a fiduciary, ward, protected person, or insurance company and who is the recipient of proceeds that will be restricted for the benefit of a minor, incapacitated person, or protected person, must ensure that the restricted account has been set up correctly. The attorney must file a proof of restricted account form executed by an authorized representative of the financial institution within 30 days after issuance of letters or entry of a single transaction order.

Impact: The court must ensure that required language regarding restrictions is on every appointment order. If the court restricts the fiduciary's ability to manage the estate's monetary assets, the court must ensure that specific warning language restricting deposits to federally insured accounts appears on the order; likewise, the Clerk of the Court must ensure that the same warning language appears on any letters that issue. The court must monitor restricted accounts to ensure that the proof of restricted account forms have been timely filed by the appropriate persons.

(D)(1)-(2) - Restricted real property

Summary: Orders and letters of appointment of a guardian or conservator or pursuant to A.R.S. § 14-5409 must state any restrictions on the authority of a conservator or a personal representative to sell, lease, encumber, or convey real property of the estate. If the fiduciary's authority to manage real estate is restricted, the order must include specific language, which is set down in the rule.

Impact: Courts must ensure that the appointing order states any restrictions on the fiduciary's authority to manage accounts or real property. Clerks of Court must ensure that any letters issued contain the specific language regarding restricted accounts as set forth in the rule. The required language for the Court orders and the letters can be found in Rule 22(C)(2) regarding restricted accounts and in Rule 22(D)(2) regarding conveyance limitations.

Effective: 2/1/2012

Rule 26 *Superior Court*

[R-11-0023](#)

AOC Judges

Contact: Clerks

[Nancy](#)

[Swetnam](#)

Summary: Subsection (B) is amended to state that if the court has restricted a fiduciary's authority, the Clerk of the Court may not issue letters of appointment without including language restricting that authority.

Subsection (E) is new, and it requires conservators to file and record a certified copy of letters of appointment with the county recorder in all counties in any state where the estate owns real property. The conservator must file a copy of the recorded letters with the appointing court within 30 days after the county recorder has issued the recorded conservator's letters.

Impact: Clerks of Court must ensure that letters of appointment contain any ordered restrictions. They must also ensure that if the estate owns real property, the conservator has filed with the court a recorded copy of the letters.

Effective: 2/1/2012

Rule 26.1 *Superior Court*

[R-11-0023](#)

AOC Judges

Contact:

[Nancy](#)

[Swetnam](#)

New Rule: Written Findings on Appointment

Summary: A person with higher priority for appointment as a guardian or a conservator but who was passed over can make a written request for a specific finding no later than 10 days after entry of the order that appointed a person of lower priority. The court must make a specific finding of good cause why the higher priority person was not appointed.

Impact: Upon written request, the court must make specific findings regarding its choice of fiduciary.

Effective: 2/1/2012

Rule 27.1	<i>Superior Court</i>	New Rule: Training for Non-Licensed Fiduciaries
R-11-0023		
AOC	Judges	Summary: A person who is neither a licensed fiduciary nor a financial institution must complete a Supreme Court-approved training program before letters of appointment can be issued, except if appointed pursuant to §§ 14-5310(A), 14-5401.01(A) or 14-5207(C) or unless otherwise ordered by the court. If a non-licensed fiduciary is appointed because of an emergency, the training must be completed within 30 days of appointment or before permanent appointment of the fiduciary, whichever is earlier. The court can extend the time for good cause. "Financial institution" is defined for purposes of this rule.
Contact:	Clerks	
Nancy		
Swetnam		
		Impact: The Supreme Court must approve training programs. Clerks of Court must confirm compliance before issuing letters of appointment.
		Effective: 9/1/2012
Rule 28	<i>Superior Court</i>	Summary: This rule concerning pretrial procedures deletes a reference to Rule 16(g) of the Arizona Rules of Civil Procedure and substitutes a corresponding reference to amended Rule 29 of the probate rules.
R-11-0023		
AOC	Judges	
Contact:		Impact: Information only.
Nancy		
Swetnam		
		Effective: 2/1/2012
Rule 29	<i>Superior Court</i>	Summary: This rule title is changed from Arbitration to Alternative Dispute Resolution. In a contested matter, the court can order alternative dispute resolution (ADR) or arbitration. If ordered, arbitration is subject to Rules 73-77, Arizona Rules of Civil Procedure. The court, <i>sua sponte</i> or on motion, may direct the parties to participate in one or more ADR processes. The rule creates duties for the parties in a contested matter to confer about ADR. The parties must attempt in good faith to agree on an ADR process and report to the court the outcome of their conference within 15 days after it occurs. The parties may also request the court to conduct a conference to consider ADR procedures.
R-11-0023		
AOC	Judges	
Contact:		
Nancy		
Swetnam		
		Impact: Information only.
		Effective: 2/1/2012

Rule 30	<i>Superior Court</i>	Summary: "Inventories" is changed to "inventory" and "accounting" to "account", consistent with the applicable Arizona Revised Statutes. The provision on inventory includes a reference to A.R.S. § 14-5418(A). Unless otherwise ordered by the court, the conservator's account must be prepared in the format prescribed in the ACJA.
R-11-0023		
AOC	Judges	
Contact:		
Nancy Swetnam		

Impact: The Supreme Court will develop and adopt a new ACJA section related to forms.

Effective: 9/1/2012

Rule 30.1	<i>Superior Court</i>	<i>New Rule: Financial Order</i>
R-11-0023		
AOC	Judges	
Contact:		
Nancy Swetnam		

Summary: A fiduciary appointed as conservator for an adult must institute and follow a budget, as set forth in Rule 30.3, unless otherwise ordered by the court. The budget is filed no later than the date the inventory is due and thereafter, with each conservator's account. The court can limit expenditures or require the conservator to proceed in any other lawful manner for the protected person's best interests. After a conservator is appointed, the court may discharge the protected person's attorney if the cost of continued representation exceeds the probable benefit to the protected person. Until discharged, the attorney has continuing duties to review the conservator's inventory, budgets, and accounts and to notify the court of any concerns.

Impact: Court review of budget.

Effective: 9/1/2012

Rule 30.2	<i>Superior Court</i>	<i>New Rule: Sustainability of Conservatorship</i>
R-11-0023		
AOC	Judges	
Contact:		
Nancy Swetnam		

Summary: This new rule requires a conservator to conduct a sustainability calculation, using a good faith projection based on reasonably available information, and to disclose this information when filing an inventory, an account, or following a material change of circumstances. If there are insufficient assets to sustain the estate, given the protected person's age and medical condition, the conservator must disclose a plan for managing expenses of the estate. The format for the sustainability disclosure is set forth in the ACJA. This disclosure is not required in a conservatorship for a minor unless otherwise ordered by the court. The comment to

this rule illustrates how the calculation should be done.

Impact: The court may consider the sustainability calculation when entering orders. The Supreme Court will develop and adopt a new ACJA section related to forms.

Effective: 9/1/2012

Rule 30.3 *Superior Court*

[R-11-0023](#)

AOC

Contact:

[Nancy](#)

[Swetnam](#)

Judges

New Rule: Conservatorship Estate Budget

Summary: This new rule requires the conservator to file an initial budget and with subsequent accounts. The budget format is to follow a form prescribed in the ACJA. The conservator must provide copies to persons entitled to notice. The conservator must file an amended budget if projections exceed a threshold to be prescribed by the Arizona Judicial Council and as set forth in the instructions for the conservator's budget in the ACJA. Interested persons can file written objections to budget. The court can overrule the objection, order the conservator to reply, or set a hearing. The court can order the budget to be accepted in absence of objection. The court, *sua sponte* or on motion, shall approve, disapprove, or modify the budget to further the protected person's best interests.

Impact: The court must review the budget and consider approval, disapproval, or modification to further the protected person's best interests. The Supreme Court will develop and adopt a new ACJA section related to these instructions. The Arizona Judicial Council will prescribe a threshold.

Effective: 9/1/2012

Rule 33 *Superior Court*

[R-11-0023](#)

AOC

Contact:

[Nancy](#)

[Swetnam](#)

Judges

Summary: A fiduciary who is seeking compensation must give written notice of the basis for the compensation as required by A.R.S. § 14-5109. (A.R.S. § 14-5109(a) provides in part that "the statement must provide a general explanation of the compensation arrangement and how the compensation will be computed.") When determining reasonable compensation, the court must follow statewide fee guidelines set forth in the ACJA. Compensation payable to attorneys or guardians ad litem from the estate of a ward or protected person is waived if not submitted in compliance with ARS § 14-5110, which describes a deadline for a compensation claim.

Impact: The court must follow the statewide fee guidelines set forth in ACJA. Review compensation requests for compliance with ARS § 14-5110. The Supreme Court will develop and adopt a new AJCA section for the statewide fee guidelines.

Effective: 9/1/2012

Rule 38	<i>Superior Court</i>	Summary: Forms 5 through 9 as prescribed in the ACJA meet the requirements of these rules. Unless otherwise ordered by the court, forms 5 through 8 are the exclusive method for presenting such matters to the court. Form 9 may be used by a conservator only if authorized to do so. The instructions included with forms 5 through 9 supplement the rules and have the same force and effect as the rules. In addition, the Supreme Court Order adopting these new Probate Rules directed that existing Probate Forms 1 through 4, as contained in Rule 38, will be moved to the new ACJA section.
R-11-0023		
AOC	Judges	
Contact: Nancy Swetnam		

Impact: Monitor compliance with use of the mandated forms. Judges will review the information provided in these forms when reviewing the inventory, budget and accounts.

Effective: 9/1/2012

Supreme Court Rules of Procedure

▼		
RULE	AFFECTS	SUMMARY AND IMPACT
Rule 29(b)	<i>Supreme Court of Appeals</i>	Summary: Rule 29(B) addresses appellate court records. The existing rule requires clerks of these courts to make a “photographic or electronic reproduction or image of the original record” and to maintain this copy “in a place and manner as will reasonably assure its permanent preservation.” The rule was designed to provide the Arizona State Archives with a microfilm copy of case records in appellate courts. The amendment to Rule 29(B) will allow appellate courts to send original paper files to the Arizona State Archives, rather than sending microfilm. Original digital files that are scheduled for permanent preservation may be retained by the clerks in their electronic record repositories until State Archives has the capability to accept and preserve records in this format.
R-11-0003		
AOC	Clerks	
Contact: Mark Meltzer		

Rule 29(B)(1) updates a cross reference to Supreme Court Rule 19(a), which was deleted in 1994. The substance of that deleted rule now appears in Rule 31.23(a)(5) of the Rules of Criminal Procedure, and the latter reference has been substituted for the former.

Impact: This rule change should not impact trial courts. The change will spare appellate courts the expense of converting paper to microfilm.

Rule 31	<i>Superior Court</i>	Summary: A licensed fiduciary may perform services in compliance with ACJA § 7-202. The court may suspend a fiduciary's authority to act without an attorney if lay representation interferes with the orderly progress of the proceedings or imposes undue burdens on other parties.
R-11-0023	Judges	
AOC		
Contact:		
Nancy Swetnam		Impact: The Supreme Court will develop and adopt amendments to ACJA § 7-202: Fiduciaries to specify the activities a licensed fiduciary may perform without the services of an attorney. Examples include preparation and filing of the annual account. Courts should consider the services a licensed fiduciary is authorized to perform when reviewing the accounts and bills for attorney fees.

Effective: 9/1/2012

Rule 42, Ethical Rule 1.5	<i>Superior Court Justice Court Municipal Court</i>	Summary: Two separate petitions in the current rules cycle have resulted in changes to Rule 42, ER 1.5.
R-11-0004		
R-11-0015	Judges	
AOC	Clerks	
Contact:	Administrators	
Mark Meltzer		<ol style="list-style-type: none">1. 11-0015: ER 1.5(b) requires a lawyer to communicate to a client "in writing" the scope of representation and the basis of the fee and expenses, and to do this when representation commences and thereafter when the rate or basis of the fee and expenses changes. The amendment to this ethical rule exempts court-appointed lawyers who are paid by a court or other governmental entity from this "in writing" requirement.2. 11-0004: ER 1.5(b) requires that lawyers communicate in writing any changes in the basis or rate of a fee, but it does not specify when this must be done. The amendment to ER 1.5(b) now requires that this communication must occur "before the fees or expenses

to be billed at higher rates are actually incurred.”

Impact: The trial courts should be aware of these changes, but the revisions should not impact the courts.

Rule 124	<i>Superior Court</i>	Summary: The order on this petition struck the entire, existing Rule 124, and added a comment that states: The current language of Rule 124 has been deleted because it has become obsolete. Pending the adoption of a new Rule 124, electronic filing, delivery and service of documents shall be governed by Supreme Court administrative order(s), which may be found at the Supreme Court’s website: http://www.azcourts.gov/ .
R-11-0012	<i>Justice Court</i>	
AOC	<i>Municipal Court</i>	
Contact:	Judges	
Melinda	Clerks	
Hardman	Administrators	

Impact: Refer to [existing administrative orders concerning electronic filing, delivery, and service](#).

Tax Court Rules of Procedure



RULE	AFFECTS	SUMMARY AND IMPACT
Rule 6, 18, 19, 20 and 24	<i>Superior Court</i>	Summary: The underlying rule petition noted that the majority of tax cases are filed in the last quarter of the year. This creates an imbalanced trial schedule for small tax cases because under the existing rule, most of these trials must be held in the first five-and-a-half months of the calendar year and the remaining months have significantly fewer trials. In response, the Order in R-10-0024 amended Rule 24 to extend the period (from six months to nine months) for trial in small tax cases. The Presiding Judge of the Superior Court in Maricopa County by administrative order may extend the time for extraordinary circumstances.
R-10-0024	Judges	
AOC	Clerks	
Contact:	Administrators	
Mark		
Meltzer		
		Technical amendments were made to other rules.
		Impact: Information only.

Adopted on a Permanent Basis

Rules of Protective Order Procedure Rule 6

RULE	AFFECTS	SUMMARY AND IMPACT
R-10-0025 Contact: Kay Radwanski	<i>Superior Court</i> <i>Justice Court</i> <i>Municipal Court</i> Judges Clerks Administrators	<p>Summary: This rule has been conformed to amendments to A.R.S. § 13-3602(G) that authorize the inclusion of animals within the terms of an Order of Protection:</p> <p>The judicial officer may also grant the plaintiff the exclusive care, custody, or control of any animal that is owned, possessed, leased, kept, or held by the plaintiff, the defendant, or a minor child residing in the residence or household of the plaintiff or the defendant, and order the defendant to stay away from the animal and forbid the defendant from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect in violation of Section 13-2910, or otherwise disposing of the animal.</p> <p>Impact: To implement this new provision, courts should provide individuals who are seeking an Order of Protection with the modified Plaintiff's Guide Sheet that is appended to Administrative Directive 2010-25. If the court orders that an animal be protected, the animal's name and species should be entered in the "Other Orders" field on the Order of Protection.</p>

Traffic and Boating Rules, Appendix A

RULE	AFFECTS	SUMMARY AND IMPACT
R-10-0027 Contact: Patrick Scott	<i>Justice Court</i> <i>Municipal Court</i> Judges Clerks Administration	<p>Summary: This amendment conformed the violator/defendant copy of the Arizona Traffic Ticket and Complaint to A.R.S. § 28-1557 by removing the violator/defendant's social security number from that copy.</p> <p>Impact: Information only. The law enforcement copy and the court's copy of the ATTC continue to show the social security number of the violator/defendant.</p>

Juvenile Court Rules 38, 40, 47.1, 50, 52, 56

RULE	AFFECTS	SUMMARY AND IMPACT
R-10-0028	<i>Superior Court</i>	<p>Summary: These rules were amended to conform to statutory changes.</p>

Contact:

[Caroline
Lautt-
Owens](#)

Judges

Clerks

Administration

Impact:

1. Rule 38(A) (appointed counsel for the child) and Rule 40(A) (an appointed guardian ad litem for the child) require that the appointed individuals meet with the child before the preliminary protective hearing, and if that is not possible, within fourteen days thereafter. These individuals must also meet with the child before any substantive hearing, unless a judge upon a showing of extraordinary circumstances modifies this requirement. (See further R-11-0013, *supra*.)
2. Rule 47.1 requires that new mandatory judicial determinations must be made: (1) at the initial dependency hearing (whether the department is attempting to identify and assess placement of the child with the child's siblings, if such placement is possible and in the child's best interests); and (2) at the permanency hearing (what efforts have been made in the permanency plan to place the child with the child's siblings or to provide the child with frequent visitation or contact with the child's siblings, unless that is not possible or it is contrary to the child's or sibling's safety or well being).
3. Rule 56 requires that at the disposition hearing, the court must make the determinations required by Rule 47.1 (a conforming technical change).

Supreme Court Rule 94(b)

RULE	AFFECTS	SUMMARY AND IMPACT
R-10-0029	<i>Superior Court</i>	Summary: This amendment conformed the rule to HB 2109. It allows the presiding judge of the county to close the Superior Court on the day after Thanksgiving, and to keep the court open on Columbus Day, if the county's board of supervisors has designated the day after Thanksgiving as a legal holiday in place of Columbus Day.
Contact: Patrick Scott	Judges Clerks Administration	Impact: The court's calendar should conform to the holiday schedule that has been adopted.

Rules of Criminal Procedure, Rule 11.3

RULE	AFFECTS	SUMMARY AND IMPACT
R-10-0026 Contact: Mark Meltzer	<i>Superior Court</i> Judges Clerks Administration	<p>Summary: In conformity with a change to A.R.S. § 13-4505, Rule 11.3 was amended so that “at least one” of “at least two” experts appointed for a Rule 11 exam no longer needs to be a psychiatrist, as previously required; although on motion of a party or upon the court’s motion, one of the experts may be a licensed psychiatrist. Under the amended rule, the parties may also stipulate to the appointment of a single expert, but only with approval of the court.</p> <p>Impact: Each court should assure that it has a sufficient number of psychologists available for court appointments in Rule 11 proceedings.</p>

Rules of Criminal Procedure

RULE	AFFECTS	SUMMARY AND IMPACT
Rules 8.4 and 32.10 R-11-0021 AOC Contact: Mark Meltzer	<i>Superior Court</i> <i>Justice Court</i> <i>Municipal Court</i> Judges Clerks Administrators	<p>Summary: Because of new legislation, the term “intellectual disability” replaces the term “mental retardation” in Rule 8.4 (excluded periods) and Rule 32.10 (review of mental retardation determination).</p> <p>Impact: Standard minute entries and orders concerning mental retardation proceedings should now reflect the new term, “intellectual disability.”</p>

Rules of Family Law Procedure

RULE	AFFECTS	SUMMARY AND IMPACT
Rule 68 R-11-0022 AOC Contact: Kathy Sekardi	<i>Superior Court</i> Judges Clerks Administrators	<p>Summary: Under Rule 68(A)(2)(a), counseling must be completed within 60 days of the filing of a petition for conciliation. During this time, any pending action for dissolution, legal separation, or annulment is stayed, unless the court lifts the stay before the expiration of the 60-day period.</p> <p>New Rule 68(A)(2)(d), which is a result of a legislative change, allows a party to petition the court for an extension of the stay of proceedings. The moving party must state the basis for the extension and include a plan for reconciliation or a counseling schedule. The court may grant a reasonable extension of up to 120 days, if the moving party establishes good cause for the extension. The court shall not grant an extension, if the other</p>

party objects with good cause.

Impact: A new document entitled “petition for extension of a stay of proceedings” may require a new docketing code. Calendaring systems should anticipate extensions of up to 120 days for completion of conciliation.

Rules of Probate Procedure

RULE	AFFECTS	SUMMARY AND IMPACT
Rule 5 R-11-0020 AOC Contact: Caroline Lautt- Owens	<i>Superior Court</i> Judges Clerks Administrators	<p>Summary: A legislative change in Title 14 allows a party to petition for continuation of a conservatorship or other protective order beyond a minor’s eighteenth birthday rather than reinitiating proceedings after the minor turns eighteen.</p> <p>New Probate Rule 5(c) ensures that the caption and case filing number of a conservatorship or other protective proceeding initiated pursuant to this legislation remains constant. The new rule therefore provides that a petition to continue a minor conservatorship or other protective order pursuant to A.R.S. §14-5401(b) will be filed in the pending protective proceeding case; and if the court grants the petition, the case number will remain the same but the caption will be amended to reflect that the conservatorship or other protective order is for an adult.</p> <p>This rule change assures that the fiduciary continues to have access to financial accounts and other private information after entry of the continuation order.</p> <p>Impact: In situations where a minor’s conservatorship is continued into adulthood, the caption will need to be amended to reflect the majority of the protected person, although the case number remains the same.</p>

Rule Petitions- Rejected



The following rule petitions were rejected:

R-10-0004

This was a *sua sponte* petition to amend Rule 31.12 of the Arizona Rules of Criminal Procedure and Rule 6(c) of the Arizona Rules of Civil Appellate Procedure. It would have required paragraph numbers in paper-filed documents, and as set forth in Supreme Court Rule 124(f) for electronically filed documents.

See further the disposition of R-11-0012, *supra*, which resulted in the deletion of the current language in Rule 124.

R-10-0032

This petition to amend Supreme Court Rule 111 and Rule 28 of the Arizona Rules of Civil Appellate Procedure would have permitted citation of non-Arizona “unpublished” decisions as authorized by the issuing jurisdiction.

R-11-0001

This petition to amend Supreme Court Rule 31(d) would have allowed an authorized agent of a planned community association or a condominium unit owners' association to prepare, execute, and record liens on behalf of associations; communicate with homeowners about unpaid assessments and fees; and represent associations in procedures before the small claims division in justice courts.

R-11-0009

This petition by the State Bar would have amended Rules 5(c) and 6(e) of the Arizona Rules of Civil Procedure to permit service either through a court-authorized electronic transmission system, or by electronic mail when an attorney is served on behalf of a party.

See further the comment added by R-11-0012, *supra*, to Supreme Court Rule 124.